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ABSTRACT

The research reported here is a small part of a much larger research program that will focus on changes in the sharing of authority that takes place after collective bargaining in higher education institutions is initiated, stressing especially the points where sharing is difficult and where rights questions arise. It is the eventual goal to develop models of academic administrative power before and after the initiation of collective bargaining. The analysis of the 91 collective bargaining contracts in higher education that are in force at the present time reveals that governance matters such as budgeting and long range planning still are largely management territory. The contracts have much more to say about the personnel area. Without doubt, the employment status of the faculty member is receiving new emphasis. Still slightly over 50% of the agreements said nothing about appointment, evaluation or promotion, and less than 10% had achieved strong voice in these areas. Analysis of the more potent agreements shows that vague pronouncements disappear in favor of the specification of decisionmaking rights and procedures, sometimes culminating in the requirements of faculty committee approval. (HS)

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MANAGEMENT RIGHTS ISSUES IN COLLECTIVE BARGAINING IN HIGHER EDUCATION

Margaret K. Chandler & Connie Chiang

The management rights issue is not dead. Whenever administrators in an institution of higher education examine their decision-making task load, the rights issue emerges. To a man they will maintain that in the interest of effective and efficient management some decisions must not be shared and others would be better made if not shared with the faculty and its bargaining representatives. If sharing takes place, the process will change for the worse: inappropriate pressures, considerations and criteria will be introduced.

Of course, the academic administrator, unlike the traditional industrial manager, does not begin with a full battery of "rights" that the entering union slowly chips away. Shared authority is an old tradition. Faculties view themselves as self-governing professional bodies. Management rights have a counter-balance: faculty rights. Like the craft unions in the construction and printing trades, faculties have long had considerable control over working conditions and employment relations. In fact, they have been active in many decision areas which in private industry are considered exclusive management territory. But unlike the

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case of the craft unions, these faculty concerns have not been buttressed by a collective contractual relationship. Also unlike the crafts, the "rights" issue does not begin and end with local management. When it comes to matters of governance, boards of trustees and legislators typically are eager exponents of management rights, all too willing to stake out and defend the territory. On the management side, then, the picture is complex, for there is not just one management with one view of its rights. Instead, one is faced with the conflicting positions of administrators, boards of trustees, and legislators.

Structural factors have reshaped the rights picture in recent years. The development of large statewide multi-campus systems has served to move power away from local faculty groups. In these large bureaucratized academic institutions the rights context has become increasingly important as the area of shared faculty-administration goals has narrowed. There are signs that the traditional concept of shared authority is not being called into play in an increasing number of so-called "interests" disputes which are seen as matters of faculty versus administration. The notion of joint governance has weakened as more and more issues of the employer-employee type arise. As in union-management relations in industry, these issues inevitably take on a zero-sum, "you win, I lose" aspect.

Those seeking to understand these developments find that unfortunately, research on college and university government is still in the beginning stages. Empirical studies are scarce. Professors of industrial relations have found little interest in research on problems in their immediate

environment. Thus, as faculties move into collective bargaining relations, predictions about the potential consequences are based much more on conjecture than on solid facts.

The research reported here is a small part--a beginning--of a much larger research program that will focus on changes in the sharing of authority that take place after collective bargaining is initiated, stressing especially the points where sharing is difficult and where rights questions arise. It is our eventual goal to develop models of academic administrative power before and after the initiation of collective bargaining.

This report is based largely on our analysis of collective bargaining contracts in higher education that are in force at the present time. Our sample includes 91 in all, heavily weighted on the side of two year institutions, with 70 in that category as compared to 21 four year colleges.[1] This balance represents the state of affairs at the present time. If one wants to use our sample results to generalize about future developments, the fact that over three-fourths of the institutions are two year colleges undoubtedly serves as a biasing factor. In the future we will undoubtedly see the organization of faculties proceed more strongly at the four year and graduate level just as the two year colleges were spurred on originally by activity in the primary and secondary schools.

Affiliation

For the group as a whole, strictly local relationships are rare.

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[1]According to College and University Business, March 1973, Vol. 54, No. 3, in 1972 a total of 43 four-year institutions and 120 two-year institutions had collective bargaining agreements, but of these only 91 were available for distribution.

Ninety-five per cent of the faculty associations are nationally affiliated, with 87% in either the National Education Association (56%) or the American Federation of Teachers (31%). However, the two year and four year institutions differ in their choice of parent organization. NEA is dominant in the two year colleges (64% of the total) while the AAUP has only one per cent of these colleges. On the other hand, the four year colleges are split almost equally among the NEA, the AFT and the AAUP.

Size and Geographic Location

Institutions in the sample run the gamut of sizes found in the universe, from under 1,000 to over 100,000. However, almost two thirds fall in the moderate 1,000 to 6,000 pupil size. Not surprisingly the two year institutions fall at the low end of the size range, while the four year group dominates at the other end.

With regard to geographic location, 48% of the total sample is located in the East, 42% in the Midwest and 10% in the West. There is a regional bias with regard to the distribution of two and four year institutions. Three-fourths of our four year institutions are located in the East, whereas 90% of the Midwestern and Western representatives are two year colleges. Our demographic variables are clearly interdependent. However, as we get into our data analysis we shall see that there are no clear blocks of "votes", all going one way or the other.

The Management Rights Clause

The management rights clause in a collective bargaining agreement is at best a strange beast. It is a claim to rights found in a document whose whole purpose is their restriction. One might say that we even maintain management rights as a notion that then permits yielding to bargaining power.

Such imprecise rights have proven to be elusive and difficult to exercise at the workplace, and in this pluralistic society there is very little consensus on what they shall be. Nevertheless, judgments that they are dead are premature. In many places there are no unions and in many instances where unions exist they have little voice. Moreover, I think that the management that insists on one of these clauses tells you something about its philosophy with regard to the union-management relationship. It sees itself as a hard-liner. An expanding field of mutual interests is not its cup of tea, and it uses this device to warn grievance processors, arbitrators and others of this fact.

One might have anticipated that our sage academic brethren might have dispensed with this whole untidy matter when they sat down to spell out the details of their collective bargaining relationship. But interestingly, this did not prove to be the case. Sixty-eight per cent of our contracts, 70% of the two year colleges and 62% of the four year colleges, had such clauses in their agreements.

Some of these clauses were far from being meek, mild, tentative claims. Take the following as a prime example:

> 2.7 The Association recognizes that the College retains the sole right to manage the business of the College, including but not limited to the right to plan, direct, and control its operations; to determine the location of its facilities; to decide the business hours of its operations; to decide the types of educational service it shall provide and books to be sold; to maintain order and efficiency in its operations to hire, lay off according to department seniority, assign, transfer and promote employees; and to determine the starting and quitting time, work schedules, and number of hours to be worked; the number of faculty members, and to determine the qualifications of its employees; and all other rights and responsibilities, including those exercised unilaterally in the past, subject only to clear and express restrictions governing the exercise of these rights as are expressly provided for in this Agreement.

One wonders who was bargaining with whom.

We rated these clauses on a five point scale, assigning a lower rating to very general statements and increasing the score as contracts began to specify in detail the rights that management was retaining. On this basis, the clause presented above is one of fourteen that received a top rating. Forty-nine per cent of the clauses represented the general, "warning to the arbitrator," variety, while 19% contained strong specific statements. College administrators with a strong proclivity for management rights did seem to be concentrated in one sector--in two year colleges in the Midwest, in the size class under 6,000.

The assertion of management rights is one side of the coin. The other side is the contractually established extent of association influence in various key areas. There is a common tendency to see this

as a zero sum game in which all contractually achieved association powers are achieved at the expense of management. However, conceptually it is entirely possible for the association to gain power without any concomitant loss on management's part. The total amount of control over events in the institution may simply increase. Frequently management is not able to control adequately. Some areas may be essentially a "no man's land," where no effective controls exist. The entry of another party into a decision area may lead to improvement. A problem area will be highlighted and given greater attention. On the other hand, things may become worse than they were. Employee participation in decision-making is not new in the academic world, but the bargaining context is. For instance, one academic administrator claimed that the educational situation at his university had deteriorated because bargaining relations had "unduly favored the employment status of individual faculty members, at the expense of institutional interests."

The real loss of rights for management occurs when the new relationship leads to lessened or poorer control than previously existed. Clearly this is not a matter than can be satisfactorily analyzed by study of a collective bargaining agreement. This is a profound, many-faceted problem. The contract language gives us one kind of reading of the situation. One obviously needs many more in-depth readings of the prior and current situation to properly assess the impact of a new collective bargaining situation on management rights.

However, with all its limitations our analysis of contract terms did bring forth some interesting facts and conclusions relating to our problem. We shall report below the results of this research.

Extent of Association Influence

Researchers have found that as the level of employee skill and education increases, interest in participation in management functions becomes keener. On this basis one can anticipate a concerted drive in this direction on the part of professors and staff members in institutions of higher learning. On the other hand, one is faced by the academic administrator's considerable reluctance to share. As one of them put it, "You cannot escape responsibility by sharing it." This man represents many who feel that at least in some management functions sole authority is the corollary of maximum efficiency.

In this research we are seeking an answer to the following question: To what extent have faculty associations penetrated the managerial functions of the academic administrator via collective bargaining? Historically, these functions have been penetrated in other ways through the establishment of a variety of faculty councils and committees and representative bodies such as Faculty Senates.

Interestingly, collective bargaining, U.S. style has eschewed this "participative route." Our unions concentrate on the role of critic,

defending the members' interests, but doing this strictly as an outsider to the managerial apparatus. In Europe, one finds the unions engaged in area-wide collective bargaining. There is little involvement in the plant or in face-to-face relations with managers. This activity is left to the works councils, composed of elected representatives of the employees and entirely separate from the union.

We now have professors joining unions, politely referred to as "assocations." Will these associations proceed to behave U.S. style as promoters of more and better bread and butter, leaving management essentially unfettered? Or will they strive to enlarge on the existing participative structures, getting for association members more and more of a determining voice in a variety of questions?

As a first step we selected seven crucial areas, all of which are the center of power struggles in academic institutions. Five are essentially personnel matters, appointment, evaluation, nonrenewal, promotion and tenure. On the surface personnel functions might seem to be a natural easily accepted area for joint decision-making via collective bargaining. However, research shows that while sharing in the welfare and benefit aspects of the personnel functions is well accepted by employers, there is considerable resistance to substantial invasion of the hard core of the personnel area as exemplified by the above decision areas.

The other two areas involve the heart of the managerial function: governance: long range planning and budget (allocation of funds.)

We will consider each area in turn in order to establish the type and strength of contractually gained association controls in each one.

Appointment

Faculty voice in new appointments is a traditional but by no means universal matter. This practice flows from the concept of a faculty as a self-governing craft or professional group whose present members are considered the only ones qualified to select future members of the group.

Despite the strength of this tradition, we found that half of our contracts made no provision for this function. At the next level we found the specification of some conditions, e.g., according to university policy, and vague criteria to guide this decision, e.g., ability and contribution. Stronger clauses establish procedures, e.g., faculty committee recommendation (twenty-five per cent of the contracts). The strongest clauses stated that the final appointment decision is to be made by the departmental committee.[1] Only 3% of the contracts had this provision. All were large schools in the East. In fact strong gains in this area were concentrated in large (over 6,000 students) four year colleges in the East. The

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[1]In scaling for extent of association influence we used the above pattern of grading for each area. The lowest rank in our five point scale was assigned when there was no contract provision. Increasingly higher ratings were given as the agreements moved from vague criteria and condition to the specification of procedures that give the faculty voice in the decision-making process. The highest rank was accorded when faculty members essentially made the final decision alone or as part of a joint committee.

following is an example of a strong agreement gained in one of these schools:

> 54.2 Faculty Appointments
>
> Commencing with the Spring semester of the 1970-1971 academic year, the initial decision on appointments of new full-time faculty members shall be made by the departmental personnel and budget committee in accordance with present practices; the initial decision on appointments of new adjunct faculty members shall be made in accordance with present practices. No appointment shall be rejected by an administrative officer without reason being supplied, in writing to the departmental personnel and budget committee. Except as provided in the 1966 Statement on Government of Colleges and Universities of the American Association of University Professors, no full-time faculty member will be appointed without the approval of the appropriate departmental personnel and budget committee.

Evaluation

Evaluation is a controversial area in academia. According to tradition the professional is to be judged by his peers, at his institution and in the outside world. High level administrators are not thought to be capable of doing this job, even if they have acquired a Ph.D. somewhere along the way. Administrators are more apt to become deeply involved in this function in institutions modeled after the traditional school system, such as junior colleges. Thus it is not surprising that we found here the greatest push for voice in the evaluation process.

Again, slightly over one-half (52%) of these contracts said nothing about this matter; 23% had weak provisions and 25% moderately strong or strong. A small group (7%) had achieved strong voice. Evaluation committees were established, and the criteria they were to use were specified. All of these were two year colleges in the Midwest or West.

Nonrenewal

Nonrenewal or dismissal obviously is a serious question. One would assume that all of the sectors included in this sample would be concerned about it, although the greatest concern will be felt in institutions with many (usually younger) people without tenure. The ranking on our five point scale depended upon the extent of faculty participation provided for, with the requirement of faculty approval receiving the highest score.

The stronger association pressure in this area is reflected in the fact that only 25% of the agreements had no clause relating to nonrenewal. Moreover, 38% included an appeals procedure and faculty participation in the decision. There seemed to be no marked differences among the various sectors' achievements in regard to this question.

Promotion and Tenure

Promotion and tenure will be considered together. Both involve a movement in rank and an increase in status, although tenure is a much more serious decision because it involves a permanent commitment on the part of the institution.

As in other instances slightly over one-half of our contracts made no mention of this issue. On the other hand 30% spelled out specific procedures that included the formation of a joint administration-association promotion committee. Four year institutions in the East made the strongest gains.

Tenure was once the sacred cow of academia, but recently it has come under attack. College administrators everywhere are seeking a fresh approach

to this question because large tenured staffs are beginning to pose serious budgetary problems. Some small eastern schools have stirred up their faculty associations by proposing a limitation on the number of tenured positions. They would simply continue to issue contracts to those who are performing satisfactorily but for whom tenured posts are not available.

But while this larger debate continues, associations have concentrated on the immediate problems of the tenure decision. Who shall make the decision? What appeal rights shall be given to the aggrieved?

Association pressure is reflected in the fact that only 35% of the contracts were silent on this issue. In most of our areas there are no outstanding differences in the achievements of the NEA, AFT, AAUP and Independents, but in the case of tenure, the AFT definitely had made the greatest gains, as did the larger, Eastern four year schools.

It should be noted that the provisions in some contracts fell short of full-blown tenure status. One business college contract read as follows:

"On successfully completing his probationary contracts, the new appointee shall be given tenured status. This tenured contract shall be issued annually, except when cancelled through the dismissal procedures of the agreement."

The contract of a community college stated:

"The granting of tenure shall be for a period of three academic years and may be renewed for successive three year periods."

Governance

Governance in a college or college or university includes a broad range of areas from health and safety and student affairs to long range planning and budgeting. For the purposes of our research, we selected the latter two as examples of critical areas lying at the heart of the management function.

Gains in these areas were predictably few in number. In the case of long range planning only six contracts established joint faculty-administration committees and eight made the same provision for faculty participation in budgetary committees.

One contract at least indicated that the views of the contractually established faculty budget (and personnel) Committee are to be regarded as more than just casual advice:

The written, documented advice of the department Personnel and Budget committee shall be implemented unless the department chairman, or in those departments which have no chairman, the supervising administrator, states in writing and in detail his/her reasons to the Personnel and Budget Committee. Unresolved disputes will be subject to the appropriate grievance procedure.

Conclusion

At the outset we noted that the management rights issue in higher education is by no means dead. For example, on March 5th of this year the administration of a midwestern community college fired 54 striking professors and replaced them with instructors chosen from hundreds of

new applicants only three weeks after they walked off the job in support of demands clearly challenging management's right to manage. At issue was the 2:1 faculty administration ratio. When the administration proposed to hire two more administrators at a total cost of $50,000.00 the entire AFT organized faculty walked out, claiming this move was a gross misdirection of priorities because at the same time the administration was unable to supply even basic educational materials.

Students joined with the old faculty. The Board of Trustees then placed an ad in the local paper urging the students to return, saying they should not be intimidated by their former instructors. As they were no longer teaching their courses, they could not possibly hurt the students.

A Donnybrook on an issue of this sort is not surprising. Our analysis of the contracts revealed that faculty associations have seldom achieved participation in budgetary decisions. Undoubtedly this will be a key area for future struggles. As we have seen in this case, the administration is not going down without a fight. But faculty members are also willing to lose their jobs over matters such as this. Not all relationships are as show-down prone as this one, but in many cases the sentiments expressed lie just beneath the surface. The problem we are addressing is a real one.

Impact of the Bargaining Context. Even in the absence of the collective bargaining relationship, faculty members have traditionally had

many institutionally provided forums--committees and councils that have enabled them to speak their minds on a variety of issues. These groups function in a manner somewhat similar to that of the works councils found in European industry. And like the works councils, some faculty committees have been effective and some, weak. As in the works council situation, then, collective bargaining faces a partly staked out territory. Still, an element is lacking--a regularized bargaining relationship at the "shop" level. Once initiated, this new relationship stirs up a whole series of questions about management rights that formerly lay dormant. The professor as a bargaining employee wants procedures governing crucial issues spelled out contractually, and the administration resists because now it feels it is giving up precious possessions, possessions it might have willingly surrendered on an informal basis. The philosophy of the zero sum game prevails.

The Results Thus Far. According to our analysis of collective bargaining agreements what "rights" has the administration surrendered thus far--or on the other side what gains has the association registered in the contract?

We must remember that we are examining largely new relationships and therefore the contractually established provisions may reflect only the first steps. In fact, some of our contracts seemed to affirm more administration rights than faculty rights! And some agreements contained what appeared to be vague affirmations of usual practices.

Strong contractual language is the exception rather than the rule.

Our study of the ninety-one agreements revealed that governance matters such as budgeting and long-range planning still are largely management territory. The contracts have much more to say about the personnel area. Without doubt, the employment status of the faculty member is receiving new emphasis. Still slightly over one-half of the agreements said nothing about appointment, evaluation or promotion, and less than ten per cent had achieved strong voice in these areas. The greater pressure on dismissal and tenure is reflected in contractual silence in only twenty-five and thirty-five per cent of these cases, respectively. Moreover, twenty per cent had strong provisions in these areas. It appears that these areas are slated for the greatest pressure on "management rights", not surprising because the actual loss of employment status is involved. Correspondingly, there is also a developing pressure on the administration to "innovate" in these areas in order to counteract the results of the pressures that are building up.

We also have discovered differences in the level of association achievements that are linked to region, size of institution, type of institution and type of bargaining organization. The East seems to run ahead of the Midwest and the West, larger institutions ahead of smaller ones, four year colleges ahead of two year, with some exceptions of course. The NEA and AFT seem to be stronger "invaders of management rights" than the AAUP and the independents, although our data do not

permit a firm conclusion on this matter.

Analysis of the more potent agreements shows that vague pronouncements disappear in favor of the specification of decision-making rights and procedures, sometimes culminating in the requirement of faculty committee approval. The trend in this direction has interesting implications. If faculty associations move toward co-decision-making, the administrators' rights certainly will be diminished. But as the faculty becomes more of a manager will it become less of an effective bargainer? The mixing of these two roles creates tension the world over, in Socialist as well as in Capitalist countries. If what we have observed constitutes a true bargaining trend, the management rights' issue that came on strong at the start of bargaining may gradually simmer down.